

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



March 10, 2004

Gregory A. Wedner

LOZANO SMITH

899 Northgate Drive, Suite 200

San Rafael, CA 94903-3666

Ramon de la Guardia, Deputy Attorney General

Department of Justice

1300 I Street

P.O. Box 944255

Sacramento, CA 94244-4973

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: **Order to Vacate Applicable Parameters and Guidelines
Revised Proposed Amendments**

School Bus Safety I and II (CSM – 4433, 97-TC-22)

Clovis Unified School District, Claimant

Education Code Sections 38048, 39831.3, and 39831.5 [renumbered as 38048], and Vehicle Code Section 22112; Statutes 1992, Chapter 624; Statutes 1994, Chapter 831; Statutes 1996, Chapter 277; Statutes 1997, Chapter 739; and Statutes 2002, Chapter 1167

Dear Mr. Wedner and Mr. de la Guardia:

On February 24, 2004, the Commission issued proposed amendments to the *School Bus Safety I and II* parameters and guidelines, vacating the parameters and guidelines for the *School Bus Safety II* program, in accordance with the Superior Court of Sacramento's judgment and peremptory writ of mandamus in *Department of Finance v. Commission on State Mandates* (02CS00994). The Statement of Decision for *School Bus Safety I* denied training as a reimbursable activity; however, the proposed amendments inadvertently retained the training reimbursement language from the consolidated parameters and guidelines. Therefore, we are issuing a revised proposed amendment superseding the draft previously issued, with the training reimbursement language in strike-out.

Commission Hearing

This item continues to be set for hearing on Thursday, **March 25, 2004** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California, and continues to be scheduled for the consent calendar unless any party objects.

Please contact Katherine Tokarski at (916) 323-3562 with any questions regarding the above.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure

j:mandates/4433/vacateSBSII/revisetrans

Adopted: October 18, 1994

Amended: November 30, 1999

Amended: January 23, 2003

Amended March 25, 2004

J:/mandates/2002/pga/02pga01sbs/pgadraft

REVISED

Proposed Amended Parameters and Guidelines Amendment **To Vacate School Bus Safety II**

~~Education Code Section 38048~~

~~Education Code Section 39831.3~~

Education Code Section 39831.5

Vehicle Code Section 22112, Subdivision (c), Subpart 3
[Renumbered as Subdivision (d), Subpart 3]

Statutes 1992, Chapter 624

~~Statutes 1994, Chapter 831~~

~~Statutes 1996, Chapter 277~~

~~Statutes 1997, Chapter 739~~

~~Statutes 2002, Chapter 1167~~

School Bus Safety I ~~and II~~

I. SUMMARY OF THE MANDATE

Statutes 1992, chapter 624 added Education Code section 39831.5, which required school districts to give emergency procedure and safety instruction to all pupils who are transported by school bus on school activity trips. Statutes 1992, chapter 624 also required school districts to document certain information each time that the safety instruction is given and to retain the documentation for a specified period of time, and required school bus drivers to use an approved hand-held "STOP" sign when escorting pupils across a highway or private road upon which the school bus is stopped, at a location where traffic is not controlled by a traffic officer or official traffic control signal.

At its hearing of February 24, 1994, the Commission on State Mandates (Commission) found that Education Code section 39831.5 and Vehicle Code section 22112, subdivision (c), subpart (3), imposed a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

~~Statutes 1994, chapter 831 amended Education Code section 39831.5 to require, among other things, that school districts provide written information on school bus safety to the parents or guardians of pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, at the time of pupil registration if the pupil had not previously been transported in a school bus. New~~

~~subdivision (a)(1) of section 39831.5 specified certain material that must be included as part of the written information.~~

~~Statutes 1996, chapter 277 repealed section 39831.5 effective January 1, 1998, and enacted a new section 38048 which contains substantially the same provisions as section 39831.5 as amended by Statutes 1994, chapter 831.~~

~~Statutes 1997, chapter 739 added Education Code section 39831.3, which requires school districts and county offices of education to prepare a transportation safety plan, to follow the transportation safety plan, to revise the transportation safety plan as required, and to keep a copy of the current transportation safety plan at each school subject to the plan.⁺~~

~~Statutes 1997, chapter 739 also amended Vehicle Code section 22112 to require school bus drivers to “operate the flashing red signal lights and stop signal arms . . . at all times when the school bus is stopped for the purpose of loading and unloading pupils,” and not just when the pupils must cross a highway.~~

~~The Commission, in its statement of decision dated July 29, 1999, determined that Education Code section 39831.5 (now section 38048) as amended by Statutes 1994, chapter 831 and Statutes 1996, chapter 277; Education Code section 39831.3 and Vehicle Code section 22112, as amended by Statutes 1997, chapter 739, imposed a reimbursable state mandated new program or higher level of service within the meaning of article XIII B, section 6, of the California Constitution.~~

~~Statutes 2002, chapter 1167 required the Commission to amend these parameters and guidelines to specify that costs associated with implementation of transportation plans are not reimbursable and to detail the documentation necessary to support reimbursement claims under this mandate. This amendment shall apply to claims for costs incurred from July 1, 1995, to June 30, 2002, inclusive.~~

II. ELIGIBLE CLAIMANTS

Any “school district,” as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, prior to its amendment by Statutes 1998, chapter 681 (effective September 22, 1998) stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year.

Statutes 1992, chapter 624 became effective September 14, 1992. San Jose Unified School District filed the test claim on Statutes 1992, chapter 624 on August 20, 1993. Therefore, costs incurred on or after September 14, 1992, for compliance with Statutes 1992, chapter 624, are reimbursable.

~~On December 22, 1997, Clovis Unified School District filed the test claim on Statutes 1994, chapter 831; Statutes 1996, chapter 277; and Statutes 1997, chapter 739. Therefore, in accordance with Section 17557, as in effect on the date of the filing of the test claim, the following are eligible for reimbursement:~~

~~—For compliance with Statutes 1994, chapter 831 (effective on September 27, 1994), costs incurred on or after July 1, 1996;~~

⁺ Pursuant to Statutes 2002, chapter 1167, implementing the transportation plans is not reimbursable.

- ~~—For compliance with Statutes 1996, chapter 277 (effective on January 1, 1997), costs incurred on or after January 1, 1997; and~~
- ~~—For compliance with Statutes 1997, chapter 739 (effective on January 1, 1998), costs incurred on or after January 1, 1998.~~

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable.

Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of issuance of the claiming instructions by the State Controller.

~~For initial claims and annual claims filed prior to September 30, 2002, including amendments thereof, if the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.~~ For initial claims and annual claims filed on or after September 30, 2002, if the total costs for a given fiscal year do not exceed \$1000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

~~Notwithstanding these established periods of reimbursement, Government Code section 17581.5 states:~~

~~(a) A school district shall not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:~~

~~(1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.~~

~~(2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.~~

~~(b) This section applies only to the following mandates:~~

~~(1) The School Bus Safety II mandate (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).~~

~~(2) The School Crimes Reporting II mandate (Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).~~

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source

document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct ~~based upon personal knowledge.~~” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Instruction Prior to School Activity Trips (Ed. Code, § 39831.5, subd. (a)(2))²

Giving safety instruction, including, but not limited to, location of emergency exits, location and use of emergency equipment, and responsibilities of passengers seated next to an emergency exit, to all pupils at the elementary and secondary level riding a school bus or school pupil activity bus on any school activity trip.

B. Record Keeping and Retention (Ed. Code, § 39831.5, subd. (b))³

Documenting the following information each time the safety information is given and maintaining the information for one year from the date of instruction:

1. Name of school district, county office of education.
2. Name and location of school.
3. Date of instruction.
4. Names of supervising adults.
5. Number of pupils participating.
6. Grade levels of pupils.
7. Subjects covered in instruction.
8. Amount of time taken for instruction.
9. Bus driver’s name.
10. Bus number.
11. Additional remarks.

² As added by Statutes 1992, chapter 624; now renumbered subdivision (a)(4).

³ As added by Statutes 1992, chapter 624.

C. Hand-held Stop Signs (Veh. Code, § 22112, subd. (c)(3))⁴

1. Stop Signs

Reasonable costs for the purchase or manufacture of the hand-held “STOP” signs required to comply with Vehicle Code section 22112, subdivision (c), subpart (3). The cost for replacement/refinishing of worn out signs due to normal wear and tear is reimbursable. The cost of a manufactured/refinished hand held sign shall not exceed the cost for which a sign can be purchased.

2. Number of Stop Signs

The number of claimable hand held signs shall equal the lesser of the number of school busses or school bus routes, plus an additional five percent (but not less than one additional sign) to provide spare signs for use in the event a sign is lost, stolen, or otherwise unusable or unavailable; providing, however, that the number of claimable hand held signs shall not exceed the number of operable school busses during the fiscal year, plus the additional five percent (but not less than one additional sign).

3. Stop Sign Storage

Reasonable costs of labor and associated costs for materials and supplies needed to provide legally necessary storage for the hand-held “STOP” signs on school busses when the signs are not in use.

~~D. Instructing Prekindergarten and Kindergarten Pupils~~

~~Instructing all prekindergarten and kindergarten pupils who are transported in a school bus or school activity bus in school bus emergency procedures and passenger safety. (Ed. Code, § 39831.5, subd. (a); Ed. Code, § 38048, subd. (a).)~~

~~E. Services to Pupils in Prekindergarten Through Grade 6~~

~~1. Determining which pupils in prekindergarten, kindergarten and grades 1 through 6, inclusive (“prekindergarten through grade 6”) have not been previously transported by school bus or school activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)~~

~~2. Providing written information on school bus safety at the time of pupil registration to parents or guardians of pupils in prekindergarten through grade 6 who were not previously transported in a school bus or school activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)~~

~~3. Updating the written information on new school bus safety information (including, but not limited to a list of school bus stops near each pupil’s home, general rules of conduct at school bus loading zones, red light crossing instructions, school bus danger zones, and walking to and from school bus stops) to the parents or guardians of prekindergarten through grade 6 as necessary (for example, due to changes in procedures, changes in pupil residence, school of attendance, school bus routes or school bus stops). (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)~~

~~The cost of the materials, supplies, postage, and duplication required by this component is reimbursable under this component.~~

~~F. Preparing and Revising Transportation Safety Plans~~

⁴ As amended by Statutes 1992, chapter 624; now renumbered subdivision (d)(3).

~~Preparing a transportation safety plan and revising the transportation safety plan as necessary. Costs associated with implementation of transportation safety plans are not reimbursable. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).) This reimbursable component includes, but is not limited to, labor time of school district personnel for preparation, review, and revision of the transportation safety plan, and providing a copy of the plan to each school and, upon request, to any officer of the California Highway Patrol. (Ed. Code § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)~~

~~The cost of the materials, supplies, and duplication required by this component is reimbursable under this component.~~

G. Policies, Procedures, Training, and Public Information

~~Informing district administrators, school site personnel, transportation services staff, school bus drivers, contract carriers, students, and parents about the new Vehicle Code requirements relating to the use of flashing red signal lamps and stop signal arms (Veh. Code, § 22112) and pupil transportation requirements for pupils in prekindergarten through grade 6, responding to inquiries about the changed procedures, preparing or revising related policies, procedures, and forms, and conducting and attending training sessions regarding the use of flashing red signal lamps and stop signal arms and pupil transportation requirements for pupils in prekindergarten through grade 6. The cost of materials and supplies used or distributed in training sessions and travel and seminar expenses for the school district personnel who conduct or attend training sessions is reimbursable under this component.~~

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and

materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

~~6. Training~~

~~Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.~~

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter* is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statement of decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the statement of decision, is on file with the Commission.